



INTEGRITY IN PUBLIC LIFE

HEARING PROCESS GUIDE & RULES

Effective from 1 August 2017

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1 STATUTORY FRAMEWORK

The Ethical Standards in Public Life etc. (Scotland) Act 2000 as amended by the Scottish Parliamentary Commissions and Commissioners etc. Act 2010 and the Public Services Reform (Scotland) (Commissioner for Ethical Standards in Public Life in Scotland etc.) Order 2013 ('the Ethical Standards Act')

- 1.1 In terms of sections 1-3 of the Ethical Standards Act separate Codes of Conduct for Councillors and for Members of Devolved Public Bodies have been issued and approved by Scottish Ministers.
- 1.2 Where any person is of the opinion that a Councillor or a Member of a Devolved Public Body has contravened the relevant Code of Conduct, they may submit that allegation to the Commissioner for Ethical Standards in Public Life Scotland (CESPLS) for investigation in terms of sections 12-13 of the 2000 Act.

Any investigation into a complaint is completed by the CESPLS

- 1.3 The procedures for the investigation of allegations of misconduct made against Councillors or Members of Devolved Public Bodies is available to download from the CESPLS website at: <http://www.publicstandardscommissioner.org.uk/make-a-complaint/investigation-procedures:-councillors-and-members-of-devolved-public-bodies/>.

Actions available to the Standards Commission where the CESPLS reports the outcome of an investigation to the Standards Commission

- 1.4 Under Section 14 of the Ethical Standards Act, the CESPLS may decide to report to the Standards Commission on the outcome of any investigation he has undertaken.
- 1.5 Section 15 of the Ethical Standards Act provides that on receipt of a report, the Standards Commission may publish it and send it to whomever it thinks fit.
- 1.6 In terms of section 16 of the Ethical Standards Act, the Standards Commission may, at any time, decide to:
 - a) direct the CESPLS to carry out further investigations
 - b) hold a Hearing
 - c) do neither

Where the Standards Commission acts under paragraph a) or b) above it may do so at any time.



2 DEFINITIONS

In this document the following definitions apply:

affirmation – solemn undertaking to affirm the truth.

balance of probabilities - the applicable standard of proof to determine whether it is more likely than not that the evidence presented supports the alleged breach

case - a complaint or a number of complaints which have been investigated together as the subject matters of the complaints are the same or related.

CESPLS - the Commissioner for Ethical Standards in Public Life in Scotland or, where appropriate, a member of the CESPLS's staff or an appointed agent representing the CESPLS at any stage of the proceedings.

Chair - a Member of the Standards Commission appointed by the Convener as the Chair of a Hearing Panel.

Code of Conduct - the relevant Code of Conduct applicable to the activities of either Councillors or Members of Devolved Public Bodies.

Complainant - the person who submits a complaint to the CESPLS for investigation.

complaint - an allegation submitted to CESPLS that a councillor or board member of a devolved public body has contravened an identified section or sections of a Code of Conduct.

contravention - conduct which would be a breach of the relevant Code of Conduct.

Convener - the Convener of the Standards Commission.

Council - the local authority of an area of which the councillor is an elected member as defined by the Local Government (Scotland) Acts.

Councillor - unless the context otherwise states, this means a councillor against whom a complaint has been made.

days - refers to calendar days.

Devolved Public Body - a devolved public body as listed in Schedule 3 to the Ethical Standards Act.

document - includes all information held in hard copy or generated by means of any digital medium.

the Ethical Standards Act - the Ethical Standards in Public Life etc. (Scotland) Act 2000 as amended.

the Executive Director - the Executive Director of the Standards Commission or a member of staff representing the Executive Director.

Hearing - a Hearing conducted into an alleged breach of a code of conduct under the terms of the Ethical Standards Act.



Hearing Panel - Members of the Standards Commission selected by the Convener to conduct a Hearing.

Member - unless the context otherwise requires, means a Member of the Standards Commission.

oath – a solemn undertaking to affirm the truth of a statement involving a sacred being as witness.

parties - the CESPLS and/or their representative and the Respondent and/or their representative.

the Respondent - the person against whom an allegation of misconduct has been made.

Rules - these Rules which relate to the procedures to be followed by: Members and staff of the Standards Commission; the CESPLS and any party representing the CESPLS during Hearings; and any person or persons attending a Hearing. The Rules also apply to any person or persons (the Respondent and any party representing the Respondent) who are subject to a report submitted to the Standards Commission by the CESPLS in relation to breaches of the Councillors' or Members' Codes of Conduct.

the Standards Commission - the Standards Commission for Scotland.



3 HEARING RULES

Background

- 3.1 These Rules apply when the Standards Commission, after receiving a report from the CESPLS in terms of section 14 of the Ethical Standards Act, decides to hold a Hearing.
- 3.2 These Rules have been agreed by the Standards Commission in terms of section 17 of the Ethical Standards Act, which is reproduced below, and outline the procedures to be followed by Members and staff of the Standards Commission, the parties and anyone else who attends a Hearing.
- 3.3 The Hearing Panel may from time to time dispense with or vary any requirement of these Rules, other than those set by the Ethical Standards Act, where it appears to the Hearing Panel it would be fair and just to do so.

Section 17 Hearings before Commission

- (1) Subject to subsections (2) to (10) below, the procedure at a hearing held under section 16(b) above shall be such as the Commission determines.**
- (2) The Commission may, at any one hearing, consider alleged contraventions of the councillors' code by more than one councillor or of the members' code by more than one member of a devolved public body.**
- (3) A hearing shall be conducted by not fewer than three members of the Commission selected by the convener of the Commission.**
- (4) A councillor or member of a devolved public body whose conduct is being considered by a hearing is entitled to be heard there either in person or represented by counsel or a solicitor or any other person.**
- (5) The members of the Commission conducting a hearing may—**
 - (a) require any person to attend the hearing, give evidence and produce documents;**
 - (b) administer oaths.**
- (6) A person shall not, however, be compelled to give any evidence or produce any documents which that person could not be compelled to give or produce in civil proceedings in the Court of Session.**
- (7) A person who, without reasonable excuse, fails to comply with a requirement imposed under subsection (5)(a) above is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.**
- (8) The Commission may pay persons appearing at a hearing or attending it for the purpose of giving evidence or producing documents such expenses or allowances as it thinks fit.**
- (9) A hearing shall be held in public unless the members of the Commission conducting it determine that it is in the public interest that it, or such part of it as they specify for the purposes of this subsection, be not so held.**
- (10) In this section, "documents" shall be construed as in section 13 above.**

General Information

- 3.4 The Standards Commission will hold the Hearing at a venue of its choice normally:
 - (i) where the Respondent is a Councillor, in the area where the Headquarters of the Local Authority where they were elected is located; or
 - (ii) where the Respondent is a Member of a Public Body, in the area where the Public Body holds its meetings



- 3.5 The Standards Commission may hold the Hearing elsewhere if it determines it is appropriate to do so. If the Standards Commission intends to hold the Hearing elsewhere it will advise the parties and Local Authority or Devolved Public Body accordingly and will take into account any submissions made on this before reaching a final decision.
- 3.6 Hearings will normally be held no earlier than 6 weeks and no later than 12 weeks after the date on which the Standards Commission decides to hold a Hearing.
- 3.7 A Hearing will be conducted by a Hearing Panel comprising of three Members of the Standards Commission, with one Member acting as Chair.
- 3.8 Where two or more complaints have been made in respect of the same or related matters, the Standards Commission or the Hearing Panel may, on its own account or on an application by one or more of the parties, order that the complaints be conjoined and considered at the same Hearing. Notice to this effect will be given to the parties.
- 3.9 Any document required or authorised by these Rules to be sent or delivered to, or served on, any person will be deemed to be duly sent or delivered to or served if:
- (i) it is sent to the person's address by recorded delivery post; or
 - (ii) it is sent to the person by email or other electronic means; or
 - (iii) it is delivered to the person personally or left at their address.
- 3.10 The Standards Commission will send the parties, the council or devolved public body and the complainant confirmation of the date, time and venue at least 21 days before the Hearing.
- 3.11 Notice of the Hearing will be posted on the Standards Commission's website and provide the name of the Respondent and the date, time and venue of the Hearing.
- 3.12 The Respondent and the CESPLS will be encouraged to discuss whether any matters, including the facts and conclusions as outlined in the CESPLS's Report can be agreed. If so, they should prepare a signed joint statement providing details of those matters which are agreed and those which are in dispute. Any such signed statement should be submitted by the CESPLS to the Executive Director at least 5 days before the date of the Hearing.

Changes to Hearing Arrangements

- 3.13 The Hearing Panel may, at its own discretion or on the application of any of the parties, postpone or adjourn a Hearing. Before any postponement or adjournment is granted, the Hearing Panel will consider:
- (i) The public interest in the expeditious disposal of the case; and
 - (ii) Any inconvenience or prejudice to the Parties and to witnesses.
- 3.14 If either Party wishes to submit an application for the postponement of a Hearing, the application must be submitted in writing to the Executive Director at least 7 days before the scheduled date of the Hearing. It is at the discretion of the Chair as to whether any applications submitted later than 7 days before the scheduled date of the Hearing will be considered.



- 3.15 Where an application for postponement is granted, the Executive Director will inform the parties of the date of the re-scheduled Hearing.

Pre-Hearing Meetings

- 3.16 The Chair at his or her own discretion or on application of any of the parties may decide to hold a pre-Hearing meeting with the Respondent, the CESPLS (and/or their representatives) and any other individual the Chair considers appropriate. The purpose of such a meeting will be to:
- (i) Discuss procedural arrangements;
 - (ii) Clarify any issues;
 - (iii) Consider whether it would be appropriate to apply the Standards Commission's Abbreviated Hearing Process; and
 - (iv) Provide the parties with an opportunity to discuss whether they can agree any facts as outlined in the CESPLS's Report can be agreed.
- 3.17 Pre-Hearing meetings will normally be held in private in Edinburgh and conducted by the Chair sitting alone. The Chair may also consider if the pre-Hearing meeting could be conducted online or by video or telephone conference.
- 3.18 Where either Party wishes the pre-Hearing meeting to be postponed an application must be made in writing to the Executive Director at least 2 days before the date of the meeting. It is at the discretion of the Chair as to whether any applications submitted later than 2 days before the scheduled date of the meeting will be considered.
- 3.19 If, having been invited to a pre-Hearing meeting, one or more of the parties does not attend or is not represented then the Chair may proceed with the meeting in their absence provided he or she is satisfied appropriate notice was given.

Case Law

- 3.20 Any case law that the parties wish to rely on at a Hearing must be submitted to the Executive Director at least 7 days before the Hearing is scheduled to commence, with the relevant paragraph or passages highlighted. The Standards Commission will add any case law submitted to the productions and will circulate it to the other parties at the earliest available opportunity. During the Hearing the party presenting the case will be expected to explain why the case law is being cited and to lead the Hearing Panel through the relevant points.

Appointment of legal advisors by the Standards Commission

- 3.21 The Hearing Panel may at any time appoint its own legal advisors to assist it before, during and/or after the Hearing.

The Hearing

- 3.22 The Hearing will be held in public unless the Hearing Panel determines the Hearing or part of it will be held in private.



- 3.23 Any of the Parties may request that the Hearing or part of it be held in private by writing to the Executive Director not less than 14 days prior to the Hearing.
- 3.24 During a Hearing, the Hearing Panel may decide at its own discretion, or following a request from one of the parties or a witness, decide to proceed with the Hearing or part of it in private.
- 3.25 Representations will be sought from both parties before the Hearing Panel decides to hold a Hearing or part of it in private. To hold a Hearing or part of it in private, the Hearing Panel would have to be satisfied that:
- a. A decision to exclude the public causes no prejudice or unfairness to either party; and
 - b. The particular circumstances of the case outweigh the public interest in holding a public Hearing.
- 3.26 The Hearing Panel will also take into account the need to protect any sensitive, personal and confidential material or information when determining what and how evidence can be led and / or when deciding whether or not to hold the Hearing or part of it in private.
- 3.27 The Hearing Panel may, at its own discretion on following a request from a party or witness, exclude from the Hearing or part of it any person whose conduct is disruptive to the Hearing.
- 3.28 The Hearing Panel may decide that the Hearing will be audio recorded and will advise the parties if it intends to do so. The recording will be destroyed at the end of the period for submitting a valid appeal as indicated within section 22 of the Ethical Standards Act or, where an appeal is submitted to a sheriff principal, following the conclusion of that appeal process.
- 3.29 If the Chair is satisfied that any party or witness is unable through physical or mental impairment to attend a Hearing, the Chair, in consultation with the Members of the Hearing Panel, may make such arrangements as appear best suited in all the circumstances of the case to fairly dispose of the matter.
- 3.30 If any party fails to attend or be represented at a Hearing of which they have been notified in accordance with Rule 3.9 above, the Hearing Panel may:
- (i) on cause shown, adjourn the Hearing to another date, in which case the Executive Director will advise the parties accordingly; or
 - (ii) proceed to hear the complaint if it is satisfied that notice of the Hearing was properly given in good time and in compliance with these Rules.
- 3.31 The Hearing Panel will deliberate and reach its decision in private, although its decision, where time allows, will be announced in public at the Hearing.
- 3.32 The standard of proof the Hearing Panel will apply at Hearings is the balance of probabilities. This means the Hearing Panel will consider whether or not it is satisfied from the evidence that something being alleged is more likely than not to have occurred.
- 3.33 The written decision of the Hearing Panel will be issued no later than 14 days after the Hearing is concluded.



Representation of Respondent

- 3.34 A person whose conduct is being considered by a Hearing is entitled to be heard and to choose to be represented. The Respondent's representative can call the Respondent to give evidence as a witness. If the Respondent is represented all questions must be put to, and answered by, the representative unless they are put to the Respondent when the Respondent is giving evidence as a witness. Only the representative will be entitled to make submissions. For the avoidance of doubt, any costs associated with obtaining representation will be borne by the Respondent.
- 3.35 Where a Respondent attends the Hearing but is unrepresented they may be accompanied by an individual to support them. This individual will not be entitled to speak on behalf of the Respondent, address the Hearing Panel, provide evidence during the Hearing, or question witnesses or the CESPLS.
- 3.36 A person appearing as a witness during the Hearing will not be able to act as the Respondent's representative during the Hearing.
- 3.37 The Hearing Panel may refuse to allow a particular person to support the Respondent at the Hearing, if it is satisfied that there are good reasons for doing so.

Witnesses

- 3.38 The parties are entitled to call witnesses to give relevant evidence. The Hearing Panel may decline to hear evidence which is not relevant to the question of whether there has been a breach of the Code of Conduct. The Standards Commission will provide the parties with guidance on the relevancy of evidence before the Hearing. This guidance is also available on the Standards Commission's website at <http://www.standardscommissionscotland.org.uk/cases/hearing-rules>.
- 3.39 Other than when giving evidence, witnesses are not allowed to be in the Hearing room until after they have been discharged by the Hearing Panel.
- 3.40 In terms of section 17(5)(a) of the 2000 Act, the Standards Commission or the Hearing Panel may, at any time, on its own account or on an application by the Respondent or the CESPLS, by notice, require any person to:-
- (i) Attend as a witness at the Hearing at such time and place as may be specified in the summons and to answer any questions.
 - (ii) Produce any documents or other material in their custody or under their control which relate to any matter in question at the Hearing.
- 3.41 No person will be required to attend unless they have been given at least 7 days' notice of the Hearing and a copy of Section 17 of the Ethical Standards Act, which provides that:
- a) a person who, without reasonable excuse, fails to comply with a requirement imposed under subsection 3.46 above is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale; and
 - b) a person will not be compelled to give any evidence or produce any documents which that person could not be compelled to give or produce in civil proceedings in the Court of Session.
- 3.42 The Chair will administer oaths or affirmations to each witness prior to evidence being heard.
- 3.43 A Respondent can give evidence as a witness. If so, the Chair will administer an oath or affirmation prior to their evidence being heard.



- 3.44 When they are giving evidence, witnesses will be provided with a copy of the numbered productions, including the CESPLS Report. Witnesses, including the Respondent, will not be allowed access to any other paperwork or notes while they are giving evidence. The Respondent can, however, refer to their own notes of paperwork while making submissions.
- 3.45 Witnesses will be questioned by the party calling them and may then be cross-examined by the other party. The party calling the witness may then re-question the witness but only on new matters raised during cross-examination. The party calling the witness should not put leading questions (i.e. questions which invite a witness to give a particular response) to the witness unless they are on introductory matters or facts that are not in dispute. The Hearing Panel can choose to disregard any evidence elicited from a leading question.
- 3.46 The Hearing Panel may question witnesses at any point. Parties may question witnesses on matters arising out of any question asked by the Hearing Panel.
- 3.47 The parties will not be allowed to ‘badger’ a witness i.e. by deliberately antagonising or mocking them or by asking insulting or derisive questions in an attempt to provoke an emotional response. The Hearing Panel will ask any party doing so to desist and may prevent them from asking further questions of the witness or excuse the witness.
- 3.48 If either party believes any witness is vulnerable and/or may need particular assistance because of physical or mental impairment or any other substantial reason, they should advised the Executive Director accordingly at least 14 days before the Hearing. The Hearing Panel will consider all the relevant information and will ensure that appropriate supportive measures, as far as is reasonably practicable, are in place prior to the Hearing.



4 PROCESSES AND PROCEDURES PRIOR TO THE HEARING

Notification Actions by the Standards Commission

4.1 Within 7 days of the Standards Commission's decision to hold a Hearing, the Executive Director will:

Provide the Respondent with:

- (a) A numbered copy of the CESPLS report, for ease of reference during the Hearing.
- (b) A copy of any other document received and taken into account by the Standards Commission in deciding to hold a Hearing.
- (c) Copies of the Standards Commission's Hearing Rules, Guidance on the Relevancy of Evidence and Policy on the Application of Sanctions.
- (d) A copy of section 17 of the Ethical Standards Act, setting out that a person who, without reasonable excuse, fails to comply with a requirement to attend the Hearing, give evidence and/or produce documents is guilty of an offence.

Write to the Respondent advising them of:

- (a) The Standards Commission's decision to hold a Hearing.
- (b) The complaint made and the relevant section of the Code of Conduct that is alleged to have been breached.
- (c) The names of the Members of the Hearing Panel and the Chair, where available.
- (d) The date or dates of the Hearing.
- (e) The fact that the case against the Respondent will be conducted by the CESPLS, who may appoint counsel, a solicitor or any other person, to assist or present the complaint before the Hearing, and who may produce and make available documents.
- (f) Their entitlement to give evidence in person and/or be represented, and to call one or more witnesses to make representations on their behalf.
- (g) Their entitlement to choose not to appear at the Hearing, but instead to rely on documents previously submitted and/or a written statement of case and/or other documents; unless the Standards Commission requires otherwise in terms of section 17(5)(a) of the Ethical Standards Act.
- (h) The Standards Commission's decision to require any person to attend the Hearing, give evidence and produce documents and, if so, who they are; if such a decision is made.
- (i) The terms of section 17(6) of the Ethical Standards Act, which states that the Respondent is not required to give any evidence or produce any documents which they could not be compelled to give or produce in civil proceedings in the Court of Session.

Actions Required by the Respondent

4.2 The Respondent is required, within 21 days of the date of the Executive Director issuing the letter referred to in Rule 4.1, to send to the Executive Director:

- (a) Their written statement of case and any documents to which reference is to be made, together with any other documents that the Standards Commission has required them to produce in terms of section 17(5)(a) of the Ethical Standards Act. The statement should state whether they accept the facts in the CESPLS's report and if not, which facts are in dispute and why. The statement should also state whether they accept the conclusions reached by the CESPLS either in full or in part. The Respondent may rely on documents previously submitted to the Executive Director or CESPLS.



- (b) An indication whether they plan to attend the Hearing, give evidence and/or produce documents, in the event that the Standards Commission has not required them to do so in terms of section 17(5)(a) of the Ethical Standards Act.
- (c) Details of the names and addresses of any witnesses whom they propose to call, and the generality of the subject matter of their evidence.
- (d) Any request that the Respondent may wish to make to the Standards Commission to require a person to attend the Hearing, give evidence and/or produce documents in terms of section 17(5)(a) of the Ethical Standards Act, including reasons why this person has not agreed to appear voluntarily.
- (e) An indication of how long they will need to present their case.

4.3 Where the Respondent does not intend to appear or be represented at the Hearing, they may send to the Executive Director such additional relevant information as they wish, provided that this is received by the Executive Director at least 21 days before the Hearing takes place. This includes any submissions as to mitigation where the Respondent has accepted any or all of the CESPLS's conclusions.

Follow up action by the Standards Commission

- 4.4 The Executive Director will, within 5 days of receipt, provide copies of new/additional documentation received to the CESPLS and the Hearing Panel.
- 4.5 If no response is received from the Respondent after the expiry of the 21 days, the Hearing Panel may, at its discretion, proceed with the Hearing on the date previously notified.

Actions by the Standards Commission and the CESPLS

- 4.6 Within 7 days of the Standards Commission's decision to hold a Hearing, the Executive Director will write to the CESPLS providing notification of the Standards Commission's decision to hold a Hearing and the date or dates on which it is to be held.

Actions Required by the CESPLS

- 4.7 The Standards Commission will write to the CESPLS within 5 days of the receipt of the information required from the Respondent under 4.2 above or within 5 days of the expiration of the 21 day period outlined in 4.2. The CESPLS is required to send, to the Executive Director and the Respondent within 7 days of receipt of the Standards Commission's correspondence,;
 - (a) An indication of the names of any witnesses whom the CESPLS proposes to call, and the generality of the subject matter of their evidence.
 - (b) Any additional documents to which reference is to be made, together with any other documents that the Standards Commission may require the CESPLS to produce in terms of section 17(5)(a) of the Ethical Standards Act.
 - (c) Any request that the CESPLS may wish to make to the Standards Commission to require a person to attend the Hearing, give evidence and/or produce documents in terms of section 17(5)(a) of the Ethical Standards Act, including reasons why this person has not agreed to appear voluntarily.
 - (d) An indication of how long the CESPLS will need to present his case.



Actions by the Standards Commission to provide notification of Hearing to the Chief Executive/Monitoring Officer or Standards Officer and the Complainant

- 4.8 The Executive Director will advise the Chief Executive, Monitoring or Standards Officer and any Complainant of the Standards Commission's decision to hold a Hearing within 7 days of such a decision being made. The Executive Director will also provide these individuals with written notification of the date, time and location of the Hearing when finalised.



5 PROCEDURE DURING THE HEARING

Procedure (General)

- 5.1 Except as otherwise stated in these Rules, the procedure at the Hearing will be determined by the Chair at his or her discretion with the aim of ensuring that any issues before the Hearing Panel are determined in a just and fair manner.

Procedure (Abbreviated)

- 5.2 The Standards Commission recognises that it will not always be proportionate to follow its full procedure, as outlined in the Hearings Process Guide & Rules, at Hearings. In certain circumstances, where there is little or no dispute between the parties as to the factual circumstances behind an alleged breach of either the Councillors' Code of Conduct or the Devolved Public Body's Code of Conduct, and with the agreement of the parties, an abbreviated procedure will be followed in order to ensure Hearings are conducted in the most efficient manner. The Abbreviated Hearing Process can be found on the Standards Commission's website at www.standardscommissionscotland.org.uk/cases/hearing-rules
- 5.3 At the commencement of the Hearing, the Chair may outline the procedure which, subject to consideration of any submission from the Respondent and/or the CESPLS, they propose to adopt. The Chair's opening remarks will include:
- an explanation of the purpose of the Hearing and the order in which it will be conducted;
 - an outline of the complaint that has been made;
 - a statement that the Hearing Panel will require all witnesses to swear an oath or make an affirmation before giving their evidence;
 - an explanation that the allegation can only be upheld if the CESPLS establishes to the satisfaction of the Hearing Panel that, on the balance of probabilities, there has been a contravention of the relevant Code of Conduct;
 - an explanation that the Hearing Panel will, if the breach of the Code of Conduct is found to have been proved, hear representations from the Respondent as to mitigation;
 - notification that both parties will have an opportunity to raise any preliminary matters before any substantive submissions are heard and evidence is led..

Procedure where some or all facts are disputed

- 5.4 The Chair will commence the Hearing by asking the CESPLS to present his case as to why there has been a breach of the relevant Code of Conduct.
- 5.4.1 After giving evidence any witness led by the CESPLS may be questioned by the Respondent.
- 5.4.2 Each witness may be re-examined but only on new matters raised during the questioning by the Respondent and/or Members of the Hearing Panel.
- 5.5 The Chair will then ask the Respondent to present their case as to why there has not been a breach of the relevant Code of Conduct.
- 5.5.1 After giving evidence the Respondent and any witness they call may be questioned by the CESPLS.



5.5.2 The Respondent and each witness may be re-examined but only on new matters raised during the questioning by the CESPLS and / or the Hearing Panel.

- 5.6 The Chair may, at his or her discretion, change the sequence of this process.
- 5.7 At any time, the Chair and Members of the Hearing Panel may question the CESPLS, the Respondent and any witnesses.
- 5.8 When all evidence has been heard, the CESPLS and then the Respondent will be asked to sum up their cases.
- 5.9 The Hearing Panel will deliberate in private to determine whether, on the balance of probabilities, a breach of the Code of Conduct has or has not occurred.
- 5.10 If the Hearing Panel find the Respondent has not contravened the Code of Conduct, the case will be dismissed and the Hearing concluded.

Procedure in respect of mitigation and the determination of sanction

- 5.11 If the Hearing Panel finds that the Respondent has breached the Code of Conduct, the Chair will ask for any representations in respect of mitigation from the Respondent.
- 5.12 The Respondent will be entitled to call witnesses and /or make verbal or submit written representations as to mitigation.
- 5.13 After giving evidence in respect of mitigation the Respondent and witnesses may be questioned by the Hearing Panel.
- 5.14 The Respondent and each witness may be re-examined but only on new matters raised during the questioning by the Hearing Panel.
- 5.15 The Chair may, at his or her discretion, change the sequence of this process.
- 5.16 The Hearing Panel will thereafter deliberate in private to consider sanction.
- 5.17 Wherever possible the Chair will then re-convene the Hearing to announce the decision on sanction.
- 5.18 The Chair will advise of any right of appeal.



6 AFTER THE HEARING

The Decision of the Hearing Panel

- 6.1 The decision of the Hearing Panel will be deemed to be the decision of the Standards Commission.
- 6.2 Where, due to time constraints, it is not possible for the decision to be announced at the conclusion of the Hearing, the Executive Director will provide written notification to the CESPLS, the Respondent and the Chief Executive of the relevant council or devolved public body of the Hearing Panel's determination and any sanction imposed no later than 2 days after the conclusion of the Hearing.
- 6.3 Within 14 days of the conclusion of the Hearing, the Chair will finalise the full written decision of the Hearing Panel. The written decision will include the following information:
- (i) An overview of the complaint and outcome of the CESPLS investigation;
 - (ii) A description of the Joint Statement of Facts (if applicable);
 - (iii) A summary of the evidence presented at the Hearing;
 - (iv) Whether or not the Hearing Panel found that there had been a breach of the Code of Conduct, and the reasons for that decision;
 - (v) Any sanction imposed including, where applicable, the date on which the sanction will take effect;
 - (vi) The reasons for sanction applied;
 - (vii) Any right of appeal.
- 6.4 The written decision will be agreed and approved by the Hearing Panel and thereafter signed and dated by the Chair of the Hearing Panel. If agreed by the Chair, his or her signature may be inserted into the document using their electronic signature.
- 6.5 The Executive Director will, within 14 days of the conclusion of the Hearing, send the written decision to the Respondent, the CESPLS, the relevant council or devolved public body, the complainant and any other person the Standards Commission considers should receive a copy.
- 6.6 Where the Standards Commission has determined there has been a breach, the Respondent will be sent a copy of section 22 of the Ethical Standards Act, which outlines the Appeal procedure.
- 6.7 In the event that the Hearing Panel determines a sanction be imposed on a person who has been appointed to a devolved public body by the Crown in terms of section 23 of the Ethical Standards Act, the Executive Director will submit to the First Minister a recommendation in relation to the level of sanction determined by the Hearing Panel within 14 days of the conclusion of the Hearing in terms of section 23(2) of the Ethical Standards Act.
- 6.8 On issuing the written decision to the Chief Executive of the council or devolved public body, and in terms of section 18 of the 2000 Act, the Executive Director will confirm that:
- (i) the council or devolved public body is required to consider the decision within 3 months of receiving written notice of it (or such longer period as the Standards Commission may determine); and that
 - (ii) such consideration can only be discharged by the council or devolved public body and not by a committee, sub-committee or an officer.



- 6.9 The Executive Director will also ask the council or devolved public body to confirm that the decision has been considered.
- 6.10 The Standards Commission may make such arrangements for the publication of its decisions as it considers appropriate, but in doing so will have regard to the need to preserve the confidentiality of any evidence heard in private and for that purpose may make any necessary amendments to the text of the decision.
- 6.11 Within 21 days of the conclusion of the Hearing, the Executive Director will publish the decision on the Standards Commission's website and may also take other steps to make the decision available to the public.



HEARINGS RULES – INDICATIVE MILESTONE DATES

Data control and version information				
Date	Action by	Version Updated	New Version number	Brief Description
19/01/16	SCS	2015 V2	N/A	Removal of former paragraph 5.17 and inclusion of data control & version information.
23/5/16	SCS	2016 V1	2016 v1.1	Removal of reference to witnesses from paragraph 3.9.
23/6/16	SCS	2016 v1.1	2016 v1.2	Changes made to timescales in respect of actions to be taken by Standards Commission and parties.
01/03/17	SCS	2016 v1.1	2017 v1.0	Changes made following annual review
01/08/17	SCS	2017 v1.0	2017 v1.1	Amendments made in order to clarify some provisions



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